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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,496	12/11/2000	Brian Feinberg	60136.0128USU2	3605
94140	7590	05/24/2010		
Merchant & Gould - Cox PO Box 2903 Minneapolis, MN 55402				
EXAMINER				
PARRA, OMAR S				
ART UNIT		PAPER NUMBER		
2421				
MAIL DATE		DELIVERY MODE		
05/24/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/734,496

Applicant(s)

FEINBERG ET AL.

Examiner

OMAR PARRA

Art Unit

2421

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/John W. Miller/
Supervisory Patent Examiner, Art Unit 2421

Continuation of 11, does NOT place the application in condition for allowance because:

Applicant argues that the "Terreault reference fails to disclose, teach or suggest receiving identity, type and capability of a plurality of remote devices capable of responding to status of elements of the head-end". The examiner respectfully disagrees.

Terreault teaches that the computer is programmed for a remote mode, in which after receiving status data from the monitored headend, it's able to automatically communicate, through network manager system with multiple remote devices; col. 13 lines 23-56. Terreault specifically teaches that during this mode, the system will automatically contact on-duty or off-duty staff through pager or email messages, col. 13 lines 50-56). In other words, in order for the system to automatically send messages, information about the on-duty and off-duty staff and the remote devices they are using must have been input to the computer (which reads on the 'receiving, at the monitoring and control unit information, identity, type and capability of a plurality of remote devices', as recited on the claim language. No further description was provided in the claim language as what was meant by 'receiving identity, type and capability of remote devices'). Additionally, as mentioned above, the system automatically sends messages to on-duty or off-duty staff through pager or emails. Therefore, by knowing or differentiating to send a pager message or an email, the capabilities of the remote devices are clearly marked. The claim does not call for the system to know the capabilities of the remote devices to respond (as seems to be implied by the argument: troubleshoot) to status of the headend, as argued. The claim calls for the system to know the capabilities of the remote devices that are capable of responding to status of the headend. It is evident, that the remote devices are capable to respond (not troubleshoot) to status of the elements of the headend, since the devices can email/call back in response to the status.

Therefore, the examiner respectfully believes that applicant's invention is still covered by the art of record.